

BEFORE THE BOARD OF REAL ESTATE APPRAISERS

STATE OF IDAHO

ORIGINAL

In the Matter of the License of:)
STEPHEN A. SOUTHER,)
License No. LRA-165,)
Respondent.)

Case No. REA-L1A-01-00-020

STIPULATION AND
CONSENT ORDER

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WHEREAS, information having been received by the Idaho State Board of Real Estate Appraisers (hereinafter the "Board") which constitutes sufficient grounds for the initiation of an administrative action against Stephen A. Souther (hereinafter "Respondent"); and

WHEREAS, the parties mutually agree to settle the matter pending administrative Board action in an expeditious manner; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

A.

1. The Board may regulate the practice of real estate appraisers in the State of Idaho in accordance with title 54, chapter 41, Idaho Code.
2. Respondent Stephen A. Souther is a licensee of the Idaho State Board of Real Estate Appraisers and holds License No. LRA-165 to practice real estate appraisals in the State of Idaho. Respondent's license is subject to the provisions of title 54, chapter 41, Idaho Code.
3. Appraisals in the State of Idaho must comply with the minimum standards set forth in the Uniform Standards of Professional Appraisal Practices ("USPAP").
4. Pursuant to Idaho Code § 54-4104(14), Respondent, as a licensed residential real estate appraiser, is restricted to appraising the following:

a. Complex one to four residential units having a transaction value of less than \$250,000, and

b. Noncomplex one to four residential units having a transaction value of less than \$1 million.

COUNT ONE

5. On or about September 17, 1999, Respondent prepared an appraisal report for the property located at 5744 Government Way in Dalton Gardens, Idaho ("Subject Property #1").

6. The zoning and highest and best use of Subject Property #1 is commercial. Respondent's appraisal of Subject Property #1 was beyond the scope of Respondent's license as a licensed residential real estate appraiser, in violation of Idaho Code § 54-4104(14) and the USPAP (1999) Competency Rule.

7. Respondents' appraisal of Subject Property #1 failed to meet the following requirements of USPAP Standards (1999):

a. Page 2 of the report states that the report is a "Summary Appraisal Report," but page 3 of the FIRREA Addendum states that the report is "intended to be a self contained report," in violation of Standards Rule 2-2;

b. The report failed to properly invoke the Departure Rule and failed to consider the Income Approach, in violation of Standards Rules 2-2(a)(xi) (if report is self-contained appraisal) or 2-2(b)(xi) (if report is summary appraisal);

c. The property is zoned commercial and highest and best use is commercial, but Respondent used a residential appraisal report and used commercial properties as sales which required large adjustments in the Market Approach, in violation of the Competency Rule and Standards Rule 1-1(a);

d. The report failed to adequately identify and analyze the effect on use of existing land use regulations, economic demand and market trends, in violation of

Standards Rules 1-1(a) and 2-2(a)(x) (self-contained appraisal) or 2-2(b)(x) (summary appraisal);

e. The report failed to adequately explain the commercial zone and the non-conforming allowances, in violation of Standards Rule 1-2(e)(i) and (iv);

f. The report failed to include an adequate analysis of land sales and support for the land value, in violation of Standards Rules 1-4(a), 2-1(b) and 2-2(a)(viii) (self-contained appraisal) or 2-2(b)(viii) (summary appraisal);

g. The report failed to include Marshall and Swift calculations or depreciation calculations, which made analyses, opinions and conclusions impossible to assess, and failed to explain functional and external factors, in violations of Standards Rules 1-4(b)(i) and (ii), 2-1(a) and (b), and 2-2(a)(viii) (self-contained appraisal) or 2-2(b)(viii) (summary appraisal);

h. The report made very large unsupported adjustments in the comparables and inappropriately uses unimproved land for Comparable No. 1, in violation of Standards Rules 1-4(b)(iii), 2-1(a) and (b), and 2-2(a)(viii) (self-contained appraisal) or 2-2(b)(viii) (summary appraisal); and

i. The report failed to analyze prior sales which occurred within three years, in violation of Standards Rules 1-5(b) and 2-2(a)(ix) (self-contained appraisal) or 2-2(b)(ix) (summary appraisal).

COUNT TWO

8. On or about September 17, 1999, Respondent prepared an appraisal report for the property located at 5768 Government Way in Dalton Gardens, Idaho ("Subject Property #2").

9. The zoning and highest and best use of Subject Property #2 is commercial. Respondent's appraisal of Subject Property #2 was beyond the scope of Respondent's license as a licensed residential real estate appraiser, in violation of Idaho Code § 54-4104(14) and the USPAP (1999) Competency Rule.

10. Respondents' appraisal of Subject Property #2 failed to meet the following requirements of USPAP Standards (1999):

- a. Page 2 of the report states that the report is a "Summary Appraisal Report," but page 3 of the FIRREA Addendum states that the report is "intended to be a self contained report," in violation of Standards Rule 2-2;
- b. The report failed to properly invoke the Departure Rule and failed to consider the Income Approach, in violation of Standards Rules 2-2(a)(xi) (if report is self-contained appraisal) or 2-2(b)(xi) (if report is summary appraisal);
- c. The property is zoned commercial and highest and best use is commercial, but Respondent used a residential appraisal report and used commercial properties as sales which required large adjustments in the Market Approach, in violation of the Competency Rule and Standards Rule 1-1(a);
- d. The report failed to adequately identify and analyze the effect on use of existing land use regulations, economic demand and market trends, in violation of Standards Rules 1-1(a) and 2-2(a)(x) (self-contained appraisal) or 2-2(b)(x) (summary appraisal);
- e. The report failed to adequately explain the commercial zone and the non-conforming allowances, in violation of Standards Rule 1-2(e)(i) and (iv);
- f. The report failed to include an adequate analysis of land sales and support for the land value, in violation of Standards Rules 1-4(a), 2-1(b) and 2-2(a)(viii) (self-contained appraisal) or 2-2(b)(viii) (summary appraisal);
- g. The report failed to include Marshall and Swift calculations or depreciation calculations, which made analyses, opinions and conclusions impossible to assess, and failed to explain functional and external factors, in violations of Standards Rules 1-4(b)(i) and (ii), 2-1(a) and (b), and 2-2(a)(viii) (self-contained appraisal) or 2-2(b)(viii) (summary appraisal);

h. The report made very large unsupported adjustments in the comparables and inappropriately used unimproved land for Comparable No. 1, in violation of Standards Rules 1-4(b)(iii), 2-1(a) and (b), and 2-2(a)(viii) (self-contained appraisal) or 2-2(b)(viii) (summary appraisal); and

i. The report failed to analyze prior sales which occurred within three years, in violation of Standards Rules 1-5(b) and 2-2(a)(ix) (self-contained appraisal) or 2-2(b)(ix) (summary appraisal).

11. The above-stated allegations, if proven, would constitute a violation of the laws and rules governing the practice of real estate appraisals, specifically Idaho Code § 54-4107(1)(e) and IDAPA 24.18.01.700. Violations of these laws and rules would further constitute grounds for disciplinary action against Respondent's license to practice real estate appraisals in the State of Idaho.

12. Respondent, in lieu of proceeding with a formal disciplinary action to adjudicate the allegations as set forth above, hereby admits the violations and agrees to the discipline against his license as set forth in Section C below.

B.

I, Stephen A. Souther, by affixing my signature hereto, acknowledge that:

1. I have read and admit the allegations pending before the Board, as stated above in section A. I further understand that these allegations constitute cause for disciplinary action upon my license to practice real estate appraisals in the State of Idaho.

2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to so testify myself; the right to reconsideration; the right to appeal; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of real estate appraisals in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this stipulation as a resolution of the pending allegations.

3. I understand that in signing this consent order I am enabling the Board to impose disciplinary action upon my license without further process.

C.

Based upon the foregoing stipulation, it is agreed that the Board may issue a decision and order upon this stipulation whereby:

1. Respondent shall pay to the Board an administrative fine in the amount of One Thousand and No/100 Dollars (\$1,000.00) within thirty (30) days of the entry of the Board's Order.
2. Respondent shall pay investigative costs and attorney fees in the amount of Two Hundred Fifty and No/100 Dollars (\$250.00) within thirty (30) days of the entry of the Board's Order.
3. Respondent shall take a 15-unit USPAP course within ninety (90) days from the date of entry of the Board's Order and shall take and pass any examinations given at the conclusion of the course. Respondent shall submit proof of attendance and proof that he passed any given examinations within 30 days of attendance. If no examinations were given at the conclusion of the class, Respondent shall submit a letter from the course instructor stating that no examinations were given. Said 15 hours of continuing education shall be in addition to any continuing education Respondent is required to obtain to maintain his license. Specifically the USPAP course that Respondent is signed up for on April 6 and 7, 2004, shall be accepted as having been taken "within ninety (90) days from the date of entry of the Board's Order."
4. Respondent's License No. LRA-165 shall be placed on probation for a period of one (1) year, from the date of the entry of the Board's Order.
5. All costs associated with compliance with the terms of this stipulation are the sole responsibility of Respondent.

6. The violation of any of the terms of this Stipulation by Respondent will warrant further Board action against Respondent. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

D.

1. It is hereby agreed between the parties that this Stipulation shall be presented to the Board with a recommendation for approval from the Deputy Attorney General responsible for prosecution before the Board at the next regularly scheduled meeting of the Board.

2. Respondent understands that the Board is free to accept, modify with Respondent's approval, or reject this Stipulation, and if rejected by the Board, a formal complaint may be filed against Respondent. Respondent hereby agrees to waive any right Respondent may have to challenge the impartiality of the Board to hear the disciplinary complaint if, after review by the Board, this Stipulation is rejected.

3. If the Stipulation is not accepted by the Board, it shall be regarded as null and void. Admissions by Respondent in the Stipulation will not be regarded as evidence against Respondent at the subsequent disciplinary hearing.

4. The Consent Order shall not become effective until it has been approved by a majority of the Board and endorsed by a representative member of the Board.

5. Any failure on the part of Respondent to timely and completely comply with any term or condition herein shall be deemed a default by Respondent.

6. Any default of this Stipulation and Consent Order shall be considered a violation of Idaho Code § 54-4107(1)(d). If Respondent violates or fails to comply with this Stipulation and Consent Order, the Board may impose additional discipline against Respondent pursuant to the following procedure:

a. The Chief of the Bureau of Occupational Licenses shall schedule a hearing before the Board. Within twenty-one (21) days after the notice of hearing and

charges is served, Respondent shall submit a response to the allegations. If Respondent does not submit a timely response to the Board, the allegations will be deemed admitted.

b. At the hearing before the Board upon default, the Board and Respondent may submit affidavits made on personal knowledge and argument based upon the record in support of their positions. Unless otherwise ordered by the Board, the evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Consent Order. Respondent waives a hearing before the Board on the facts and substantive matters related to the violations described in Section A, and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

c. At the hearing, the Board will determine whether to impose additional disciplinary action, which may include conditions or limitations upon Respondent's practice or suspension or revocation of Respondent's license.

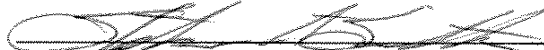
7. The Board shall have the right to make full disclosure of this Stipulation and Consent Order and the underlying facts relating hereto to any state, agency or individual requesting information subject to any applicable provisions of the Idaho Public Records Act, Idaho Code §§ 9-337-50.

8. This Stipulation and Consent Order contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

I have read the above stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I will be waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this stipulation according to the aforementioned terms, and I hereby agree to the above stipulation for settlement. I understand that if the Board approves this stipulation subject to changes, and the changes are acceptable to me, the stipulation will take effect and an order modifying the terms of the stipulation will be issued. If

the changes are unacceptable to me or the Board rejects this stipulation, it will be of no effect.


DATED this 8th day of April, 2004.


Stephen A. Souther
Respondent

I concur in this stipulation and order.

DATED this 8 day of April, 2004.


DOLAN & JACOBSEN

By 
Kenneth T. Jacobsen
Of Attorneys for Respondent

I concur in this stipulation and order.

DATED this 10th day of April, 2004.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By 
Kenneth F. Stringfield
Deputy Attorney General

ORDER

Pursuant to Idaho Code § 54-4106, the foregoing is adopted as the decision of the Board of Real Estate Appraisers in this matter and shall be effective on the 19th day of April, 2004. IT IS SO ORDERED.

IDAHO STATE BOARD
OF REAL ESTATE APPRAISERS

By 
Ruby Strörschein, Chair

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 19th day of April, 2004, I caused to be served a true and correct copy of the foregoing by the following method to:

Kenneth T. Jacobsen, Esq.
DOLAN & JACOBSEN
118 N. 7th Street
P.O. Box 1116
Coeur d'Alene, ID 83816-1116

☒ U.S. Mail
☐ Hand Delivery
☐ Certified Mail, Return Receipt Requested
☐ Overnight Mail
☐ Facsimile: _____
☐ Statehouse Mail

Kenneth F. Stringfield
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

☐ U.S. Mail
☐ Hand Delivery
☐ Certified Mail, Return Receipt Requested
☐ Overnight Mail
☐ Facsimile: _____
☒ Statehouse Mail


Rayola Jacobsen, Chief
Bureau of Occupational Licenses